



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Sydney Scales,

Movant,

-against-

United States of America,

Respondent.

1:24-cv-08571 (JSR) (SDA)

1:19-cr-00096-1 (JSR)

Order re: Attorney-Client Privilege Waiver (Informed Consent)

STEWART D. AARON, United States Magistrate Judge:

WHEREAS, Sydney Scales has moved for relief from his conviction pursuant to 28 U.S.C. § 2255 on the ground of ineffective assistance of counsel, including regarding communications with his former counsel, Justine Harris, Esq. ("Former Counsel"), about an alleged Government plea offer (Ground Four); and

WHEREAS, the motion was referred to the undersigned for a report and recommendation regarding disposition of the motion; and

WHEREAS, after reviewing the motion papers, the Government's opposition and the reply, the undersigned has concluded that the testimony of Former Counsel will assist the undersigned in making his recommendation; and

WHEREAS, by making the motion, the movant has waived the attorney-client privilege as a matter of law; and

WHEREAS the Court is cognizant that, absent informed consent, ethical concerns may inhibit Former Counsel from disclosing confidential information relating to a prior client even in the absence of a privilege, *see, e.g.*, ABA Standing Comm. on Ethics and Prof. Responsibility

Formal Op. 10-456 (July 14, 2010), Disclosure of Information to Prosecutor When Lawyer's Former Client Brings Ineffective Assistance of Counsel Claim.

IT IS HEREBY ORDERED that Sydney Scales execute and return to this Court within 60 days from today's date the accompanying "Attorney-Client Privilege Waiver (Informed Consent)" form. If the document is not received by the court within 45 days from today's date, the undersigned will recommend that the Court deny that aspect of the § 2255 motion regarding the Government's alleged plea offer, on the ground that the movant failed to authorize the disclosure of information, and it is further

ORDERED that, within 30 days from receipt of the executed Informed Consent form, Former Counsel shall give sworn testimony, in the form of an affidavit, addressing the allegations of ineffective assistance of counsel made by movant regarding the Government's alleged plea offer, including without limitation setting forth whether any formal plea offer ever was made by the Government to Mr. Scales and, if so, the communications that occurred between Mr. Scales and Former Counsel about such plea offer, and it is further

ORDERED that the Government shall email to Former Counsel a copy of this Order at the email address listed on the criminal docket.

SO ORDERED.

Dated: New York, New York
March 21, 2025

A handwritten signature in dark ink, appearing to read "Stewart D. Aaron", is written over a horizontal line.

STEWART D. AARON
United States Magistrate Judge